

MINUTES

(Subject to approval of the Interim Committee)

PROPERTY TAX INTERIM COMMITTEE

September 29, 2008

Boise, Idaho

Cochairman Representative Jim Clark called the meeting to order at 9:45 a.m. Members present were: Cochairman Senator Brad Little and Senators: Tim Corder, Lee Heinrich, Jim Hammond, David Langhorst and Elliott Werk; and Representatives: Scott Bedke, Lynn Luker, Raul Labrador, Frank Henderson and Bill Killen. Senator Jeff Siddoway and Representative George Sayler were excused. Legislative Services staff present were Eric Milstead and Twyla Melton.

Others present were: Dave Navarro, Ada County Clerk; Ross Borden, Valencia Bilyeu, and Brent Davis, Boise City; Ken Harward, Association of Idaho Cities (AIC); Teresa Molitor, CENTRA (for Idaho Legal Aid); Randy Nelson, Associated Taxpayers of Idaho (ATI); Russ Hendricks, Farm Bureau; Dan John, Idaho Tax Commission; Patti Tobias, Administrative Director of the Courts; Dan Chadwick and Sharon Burke, Idaho Association of Counties (IAC); Benjamin Davenport, Evans Keane; Martin Bilbao, Connolly Smyser; Jayson Ronk, Idaho Association of Commerce & Industry; Colby Cameron, Sullivan & Reberger; and Corrie Keller, Director of Court Services.

Cochairman Clark called for a vote on the minutes of the last meeting. **Senator Hammond moved to accept the minutes of August 7, 2008 as written. Senator Heinrich seconded the motion. The motion carried by unanimous voice vote.**

NOTE: All copies of presentations, reference materials, and handouts will be on file at the Legislative Services Office (LSO).

The first speaker on the agenda was **Dave Navarro** who presented the survey results for county revenues and expenditures for the state's court systems, criminal justice and juvenile justice systems for the year ending September 30, 2007. **Mr. Navarro** explained that the survey showed all revenues and expenditures by judicial district and by function. (Survey on file at LSO) The total revenue for all funds for the state was \$34.8 million which included \$12.7 million in property tax monies. The total expenditures for the year were \$32.8 million.

In regard to page 8 of the survey, **Representative Killen** asked about the first two categories, total court and total criminal justice. **Mr. Navarro** explained that there were two ways to get information, by function and by fund. Also, the criminal justice expenses do not include police, only prosecutors and justices.

Cochairman Clark asked if the revenue of \$30.8 million for the District Court Fund, on page 3 of the Survey, was just property tax. **Mr. Navarro** responded that it was not. The \$30.8 million was all revenues of which \$12.7 million was property tax. The District Court Fund is the only fund that has property tax revenues because it is the only one that has levy authority.

In response to a question from **Senator Langhorst**, **Patti Tobias** noted that at the last meeting, an outline was provided that showed state funding as well as non-state funds. **Senator Langhorst** asked about the \$8.0 million from the state and the \$1.3 million. How much did this fund receive in total? **Mr. Navarro** stated that they covered that on page 12 of the report. In looking at Family Court Services, the numbers are reliable by total but a little weak by function. **Ms. Tobias** observed that if family court services were used, there were funds allocated for that purpose. In many cases, it is state money passing through regions. There is not a good understanding of the flow going to the regions. If it was state funds, it wasn't reported as such.

Mr. Navarro pointed out the need to identify additional numbers in the survey and fix the holes. He also explained that in regard to the justice fund, it was created for counties that were at maximum levy rates. If they are at that maximum level, they could not levy so the justice fund was created and certain things must be provided for through that fund.

Mr. Navarro continued to go through the report covering pages 5-7 which identified the expenses by function and by cost centers.

On page 6 of the Survey, regarding prosecutors, **Senator Werk** asked whether the 359 full-time positions reflected total staff. **Mr. Navarro** answered that it was the total staff. **Senator Werk** asked if the public defenders expense included staff. **Mr. Navarro** stated that it does include staff. **Cochairman Clark** observed that only four counties have full time public defender employees. **Cochairman Little** asked if the part-time positions were annualized. **Mr. Navarro** responded that there was no full-time equivalent.

Representative Bedke stated that, referring to page 3 of the report, if the property tax revenue of \$12.7 million was 41% of the total revenue then 41% could be applied to the total to get to the amount going to law clerks. **Mr. Navarro** concurred. **Representative Bedke** commented that the cost would be about \$2.3 million.

Cochairman Little stated that this is global, wondering where to go from here. **Mr. Navarro** said that was to be decided by the committee.

Cochairman Clark requested two pie charts side by side, one on expenses by function and one by income by function. **Mr. Navarro** agreed to get those together and asked for questions on the summary.

Representative Bedke asked to start with page 34 for District 5. In this part of the district, the percentage for law clerks was 28%, not the global 40%. "What can that swing be attributed to?"

Mr. Navarro answered that Jerome County had enough funds in the county that they didn't have to draw on any other source.

Cochairman Clark suggested that a larger county be used. District 1 is about 48% for law clerks. **Sharon Burke**, Idaho Association of Counties, added that it was difficult to put all the numbers together because each county reports differently; consequently, there are some problems with consistency.

Cochairman Little called attention to the difference in the cost of law clerks. For example, in Ada County it was \$48,000 and in Blaine County \$71,000. **Ms. Tobias** explained that law clerks salaries are set by each county. They do salary surveys to determine how law clerks should be paid. This issue must be considered if it is decided to transfer law clerks to the state of Idaho. **Cochairman Clark** said they could find out what kind of salaries others states are paying.

Cochairman Clark asked if there were any more questions for **Mr. Navarro**. **Senator Heinrich** requested an explanation of the court facility process. **Mr. Navarro** explained that is the actual dollars spent for building, equipment, etc. **Senator Heinrich** followed up that the various counties viewed the court facility fund as a trust fund that money was put into creating dollars for future expansion in court facilities. "Were those figures included in this report?" **Mr. Navarro** said those trust funds were included because the survey asked for total revenues, total fund balances that carried forward, and expenditures.

Representative Luker asked about the \$17.0 million in property tax that is going into the system and if the committee looked at relief at that level, what would be the practical effect per household. **Mr. Navarro** commented that **Sharon Burke's** handout would address this in her presentation, adding that there is a per capita percentage and that she would cover that. **Ms. Burke** commented that the percentage going to households does not seem like a lot of money and might be viewed as the right thing to do instead of property tax relief. Also, it would not provide relief for consistent functions across the state.

Ms. Burke addressed the Current Expense Fund and Current Levy Data. The Current Expense Fund is the counties general fund and it includes court costs. A Percent of Limit column was included in this report which shows where each county stands in relationship to the statutory levy limit of .0026 if there is not a Justice Fund; if there is, the levy is .0020. **Ms. Burke** also distributed spreadsheets for the District Court Fund and the Justice Fund. Not all counties have a Justice Fund but they all have a District Court Fund because certain revenues are required to go into that fund.

Representative Bedke asked if a county is at 100% in any one or more funds and the other fund is less than 100%, can they "shuffle" between the funds. **Ms. Burke** responded that they could. **Representative Bedke** followed up: those counties like Butte and Madison who are at 100% in two funds could then go to the third fund to address funding issues. **Ms. Burke** answered that was correct. That is why there is not a consistent ability to say everything is in a specific fund for all

counties.

Representative Luker referred to Custer County. Custer County used 11.3% of its levy limit on the District Court Fund and on Current Expense only used 35% and there is no Criminal Justice Fund. Is that a function of not having services? **Cochairman Little** said that there is one large taxpayer that accounts for those percentages. **Ms. Burke** concurred and added that they only have basic services.

Representative Killen asked for an explanation of the Total Criminal Justice spreadsheet that showed the per capita costs. **Ms. Burke** explained that the purpose of this spreadsheet was to show the per capita cost information that was in response to a request from the last meeting. There was also a request for per-case costs. **Ms. Tobias** stated that they wanted to have the opportunity to look at the data and will have a report on per-case costs at the next meeting.

Senator Langhorst commented that when a small county had a large case, the costs would spike. Any one snapshot doesn't give a true picture. **Ms. Burke** agreed. Economies of scale occur when there are basic levels of services a small county needs to provide that will drive the per capita cost. However, it did show some level of consistency.

Representative Bedke asked if there was any county up against 100% in all three funds. **Ms. Burke** said that she didn't find any county at 100% in all funds. **Mr. Chadwick**, IAC, intervened and stated that when there is discussion about the flexibility between the different levies, it must be understood that if they are not levying in the District Court Fund, there is flexibility, but only up to that 3% growth. All they can do is move things over into another fund, it does not give them a whole lot of flexibility. **Representative Bedke** inquired as to which counties would benefit if the state provided some funding for these services. **Mr. Chadwick** responded that they do not have the answer to that question yet because all the data has not been gathered. That will be a next step, for everyone to sit down and decide, logically, what and where the assistance should go. That information will be available by the next meeting. "Is it appropriate to fund the Criminal Justice System in this state through property tax dollars; is it appropriate to fund it through the state contributions; what is the right mix and balance?" The focus of any discussion should be the appropriate methodology of funding.

Cochairman Little asked if there were any recommendations to streamline the consolidation of services between counties to gain efficiencies both in enhanced services and cost to taxpayers. **Ms. Burke** agreed that counties need to consolidate services balanced with citizens having reasonable access. **Mr. Chadwick** added that the Public Defender System must be kept in the forefront for consideration because there are questions arising about who is going to provide that service and how the services will be provided.

Senator Corder commented that the goal was to try and find equity between the counties. There are small counties like Boise and Valley, where the majority of their court costs are coming from Ada County or neighboring counties. That component must be considered in order to make the

right decision.

Senator Heinrich drew attention to the fact that, even though a county may be at less than its maximum levy rate, if the dollar amount is small, it would not take long for the court system to use up that money and those counties would be in trouble very quickly. He said there was concern last year when the Legislature discussed the personal property tax amendment.

Cochairman Clark asked about creating a fund similar to that applying to capital cases. **Mr. Chadwick** responded that there was that possibility and the question is how to fund it. Would it be a self funded program similar to the capital crimes defense fund, or could it be a combination of the county and state contributing a share? **Senator Corder** questioned whether or not it would be prudent to create more funds or just talk about eliminating the 3% cap.

Cochairman Little thought it may be a good time to talk about what the atmosphere will be like in a year, given what is happening in the real estate market and what will happen to the Homeowners Exemption (HOE). It is probable that levy rates will go up because of the possibility of a 30% reduction in property tax value.

Dan John, Idaho State Tax Commission, stated that the legislation adopted last year increased the HOE 30% for this year. According to the Housing Price Index (Index) which is the indicator, the last two quarters of the period dropped slightly. The Index is determined as of October 1st, and is based on the sales from the four most recent quarters.

Cochairman Clark stated that this year the HOE will go up and next year it will go down. **Mr. John** replied that, pursuant to statute, the HOE does not go down. It is adjusted for the increase, not for the decrease. There may be a bill coming up that would make the HOE adjust according to the Index.

Ms. Tobias reported on the complexity of court costs and the priority of payments that are ordered at sentencing for criminal cases. Civil court costs and fees are collected at the time of filing a case. This schedule, provided to the Committee, has been developed from all the statutes that have been adopted over the years and is based on legal counsel's interpretation of what was meant by the fines and court costs contained in the statutes. This is the schedule that is programmed for collection of payments that are ordered at sentencing. Until a time that the Legislature might want to put this Priority of Payment Schedule into a statute, this is the best interpretation and reconciliation of all of the varying court costs and fees. This is not for action, just for the Committee's files. (See page P1 of handout on file at LSO.)

Senator Langhorst asked how much money is outstanding and uncollected. **Ms. Tobias** stated that one item that has still not been reported to the Committee was the dollars that are uncollectable. Last meeting, **Ms. Tobias** gave the Committee the dollars ordered and the dollars paid leaving an amount that was still owed. Additional information is being gathered on what might be uncollectable by a county and what is being collected on a per-payment basis. **Senator**

Langhorst asked how much money is outstanding and what is being done to collect those unpaid amounts. It seems to be a large amount. **Ms. Tobias** replied that she did report the total amount collected by type of case and indicated the extraordinary efforts by Clerks of the District Court in each of the counties to collect monies that might not be collectable. These monies have been ordered by the Court from defendants who are sentenced and incarcerated. The Clerks find it difficult to collect those funds from someone sitting in a facility. A comprehensive policy is being developed to address the collection issue and this may be a recommendation to consider at the next meeting about how to undertake the collection of court costs, fines, fees, and forfeitures by a centralized entity like the State Tax Commission or another group. Court clerks, probation officers, Health & Welfare, and other state entities are all working on the collection of these funds. There are opportunities to make improvements. **Senator Langhorst** stated that although a centralized agency would not be the first choice, if this study could demonstrate that would be the best practice to save the taxpayers, that would be something to consider.

Representative Bedke referred back to the priority list and asked what is the order of distribution and does it ever make it to the last item. **Ms. Tobias** explained that this was the master list and an example of distribution would be if you got a speeding ticket, a certain set of six fines would be applied; if there was a felony charge, four fines would apply. This is a compilation without regard to the kind of case in question. There would never be a case that had all of the fines applied.

Cochairman Clark stated that the Judges Retirement Fund wasn't on the list. **Ms. Tobias** responded that this is only for criminal court costs; that fund is on the civil side and those fees are collected at the time of filing the case.

Ms. Tobias and **Mr. Chadwick** provided an overview of how other states finance courts, criminal justice, and juvenile justice systems. (Copy of handout is at LSO.) **Ms. Tobias** highlighted a national publication from 2004 that showed funding sources for selected expenditures. **Ms. Tobias** also summarized some recent financing trends for ten western states based on a telephone survey to the Supreme Court administrative offices in those states. **Mr. Chadwick** will focus on the financing trends of the Public Defender offices.

Ms. Tobias reviewed pages 4-6 of the national publication highlighting Idaho as the example and explained who was responsible for paying for certain functions; state, county or a combination of both. **Senator Werk** noted that there were some areas for some states where the Federal Government was responsible. **Ms. Tobias** posed that it could have been a one-time grant in that area.

Ms. Tobias discussed trends among those ten states for transferring court funding to the state as opposed to the county. Clearly, the trend has been to greater state funding of Trial Court operations as well as some of the Criminal Justice expenses and Juvenile Justice expenses. Alaska and Hawaii have been state funded since their inception. There is significant state funding of core operations. The finding was that many other states have moved all or part toward state funding either through the assumption of costs for efficiency or the state provides some funding to the

region or district or counties to offset some costs. There are different approaches depending on the purpose of providing additional state funding. The administrators that were contacted said the primary motivation in their states was to address fiscal and efficiency equities between the counties, not specifically looking at property tax relief, but rather the efficiencies to be gained by providing some state funding and relief to the counties.

Mr. Chadwick further explained that the eight states they called to get the current trends were Arizona, Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. The one consistent thing that was apparent was that there was no consistency. There may be best practices, there may be serious political issues, but it is not consistent.

The Public Defender services is an issue for all states because of the constitutional right to counsel. The level of service being provided within states is being challenged by organizations and citizens. Montana has been challenged on the way they provide public services resulting in the consolidation of these services at the state level. Currently, there is a survey, funded by a grant, being conducted in Idaho regarding Idaho's Public Defenders services and the results should be available next year. The Legislature will then be faced with the job of dealing with Public Defender services in Idaho because services are not consistent from county to county. In Nevada, the State Supreme Court has issued an order controlling caseloads for Public Defenders. There will probably be more state supreme courts getting involved in the issues of right to counsel and appropriate caseloads. *Gideon vs Wainwright* set the standard for indigent defense. This is a constitutional principle and there is an obligation to meet minimum standards, that being the question: what are the minimum standards a state is held to.

Representative Bedke asked what standard the Montana court used and was it caseload. **Mr. Chadwick** responded "no, it is more than that." It is caseload, experience, and the ability to deal with certain types of cases. For instance, a Public Defender in one county never tried a case; all cases were settled, because it was much easier. This happens frequently and sometimes it is a matter of resources. **Mr. Chadwick** provided **Mr. Milstead** with a copy of *The Justice in Jeopardy* analysis from the state of Washington. Copies were not available but the Committee could access the report electronically. This report looks at the whole trial court system including Public Defenders in the state of Washington. This is the same type of analysis that is being done here. The counties, Legislature, and courts will all have to deal with this issue because of the constitutional right; there will not be a choice. **Mr. Chadwick** learned from his counterpart in Montana that, once the state assumed the responsibility for the Public Defender, it costs the state much more than it costs the counties.

Representative Bedke inquired if, in Montana, there was an obvious point when the state could have inserted itself to have avoided the actions that were taken. **Mr. Chadwick** answered that his counterpart did not describe that but there is not necessarily an obvious point. When there are trends where states are in court on indigent defense, that is the time to pay attention. It would be best to wait until the current study on the Public Defender in Idaho is completed before doing anything. **Ms. Tobias** interjected that the Criminal Justice Commission does have a study of the

Public Defender offices underway and a report is expected in 30-60 days. There is also other information from Montana and other states as far as background, history, status, and actions taken and that information will be made available to the Committee.

Cochairman Little asked if it would be about \$5 million to pick this up. **Mr. Chadwick** stated that it would be difficult to set an amount and try to decide what the property tax portion is with all the other revenues going into it; a solid figure would be difficult to reach. **Ms. Burke** added that the Public Defender system gets a small amount of revenue from other sources, but mostly is funded from property tax.

Senator Werk commented that, historically, Idaho has gone through this with the State Appellate Public Defender. That process should be looked at in regard to shared responsibility. Another issue is that the State Appellate Public Defender is one step ahead of the law in terms of standards that must be met. If the state picked up the Public Defender, there is no guarantee there would not still be issues. In fact, it would be more likely because of the everyday activities and quantity of cases instead of just the death penalty cases.

Mr. Chadwick stated that there is a clash of interests, the constitutional issue, the standard of practice issue, and the ethical responsibility of every attorney which is a different issue that this committee cannot deal with; that is up to the State Bar.

Representative Killen referred to a copy of an opinion letter from the Attorney General's office (page 40 of the report) on this question. There is an opportunity to set standards that would probably reduce caseloads substantially for misdemeanor and felony cases by taking into consideration the various aspects of the case. **Mr. Chadwick** said that the Legislature would have to look at this "head on" and would have to repeal any law that allows for the imposition of any jail time. If there is a chance that jail can be imposed, that is the time the right is usually invoked. If the penalty allows only for a fine in that circumstance, then the need for the appointment of counsel can be escaped. It is the jail time issue that governs. **Representative Killen** respectfully disagreed. He said that experience and information show that if a judge is in that position at the beginning of the finding, the problem can be avoided. It was his understanding from the letter that is an alternative. **Mr. Chadwick** understood the argument but the issue is, is a judge going to impose or not. If the law says to impose jail time, the judicial discretion is taken away. **Representative Killen** said that it was not suggested that the Legislature binds the judge, it is only suggested that the judge has discretion, they can bind themselves should they choose to do so. **Cochairman Little** clarified that the judges have the option to say counsel will always be appointed in these indigent, non-jail misdemeanors. **Representative Killen** gave an example to clarify his meaning. An indigent person is before a judge on a traffic offense for inattentive driving and could potentially get jail time. The file indicated it was a minor offense. Under these circumstances, jail time will not be imposed and a Public Defender would not be appointed. **Mr. Chadwick** agreed with that analysis.

Ms. Tobias said that at the last meeting **Representative Killen** asked that information be gathered from Magistrate Judges as to their practice in this area and that a summary was included in the

report on pages 40-42. The conclusion on page 42 was that an amendment could be made to the statute to clarify the language. This issue could be addressed at the next meeting.

Ms. Tobias brought forth another issue that could be addressed at the next meeting. There are other states that have developed statutory guidelines as to the appointment of counsel. That could be an area that could be developed for a potential statutory change. Neither of these actions would be a substitute for adequate funding but would streamline the process.

Representative Labrador requested a copy of the Montana Supreme Court decision. It would be helpful to know how deficient the system was to cause the function to be turned over to the state.

Mr. Chadwick will provide a link to the Montana Public Defenders Office and that will get to the court case and the report.

Cochairman Clark announced that the last item on the agenda was “where to go from here” and the following were possible agenda items:

- 1) Law Clerks – what would it cost, type of property tax relief;
- 2) Jury Staff;
- 3) Public Defender Issues – maybe have Molly Huskey speak;
- 4) Centralized Collection Efforts;
- 5) Appointment of Counsel Issue – possible amendment to a statute;
- 6) Idaho Legal Aid – Teresa Molitor;

Senator Heinrich added:

- 7) Centralization of Interpreters.

Representative Luker suggested that court areas may be identified where money isn’t quite as important as efficiencies.

Cochairman Clark stated that he believes there are issues about Public Defenders and there should be a discussion about this.

Senator Werk suggested that the NCSL might be willing to come to a meeting.

Cochairman Little suggested that the State Tax Commission and the Association of Taxpayers give a brief tutorial on what is going to happen to property taxes with declining residential values.

Representative Bedke addressed the question of where to go from here. He said that the Public Defender issue sounds a lot like the school facilities lawsuit issue. Any one of these county funded areas would accept state monies. He said that the Governor just did a holdback for the general fund, wondering how much more the state can do. Are we going to do property tax relief for relief’s sake, or is there a deficiency in the status quo that state intervention would address.

Senator Werk added that from a general fund perspective, there are not a lot of funds available at least for the next few years. **Cochairman Clark** wanted to look at the costs and what kind of savings could be gained on the property tax side. **Senator Werk** responded that the groundwork is being laid for changes and if those changes can be made things would be better.

Cochairman Little referred to the Housing Price Index. If there is a 20% retrenchment in residential property tax values, what are the consequences if we are trying to give property tax relief when the counties may be in a position requiring increased levy rates.

Randy Nelson, ATI, had some information for the Committee, and he distributed a handout on actual state expenditures and property tax comparisons (on file at LSO). The report showed that property tax relief occurred in 1995 when a portion of the school M&O levy was moved to the state with no tax increase. In 2001 the agriculture equipment tax was replaced at the state level by sales tax dollars. The last change was in 2007 when the balance of the M&O levy was moved to the state and increased the sales tax. There was also a chart showing where growth in property tax was for each taxing district for the period 2000-2007. Another chart showed the growth in assessed taxable values by county from 2005 to 2008. There were continuing increases from 2005 to 2007 and, although there was an increase from 2007 to 2008, it was much smaller. These are all as of January 1st.

Mr. Nelson provided a “what if” picture of what would have happened if there had been a growth using the current system compared to a limited value system which could only grow at 3% on real property. This example showed that property tax rates have to go up to fund the budgets at the same level. If values are going down, the rate would go up.

Cochairman Little asked what the net effect would be. For instance, take the 40% that was the owner occupied segment and 25% other residential, which equals 65%. There is a 30% reduction in residential value. That would be a 12-13% reduction. “Would there be a corresponding 12-13% increase in levy rate?” “Is that the net effect?” **Mr. Nelson** concurred.

Senator Langhorst commented that this subject is not on the agenda and it is getting to issues that matter to many legislators. He suggested that if there is going to be discussion, it should be added to a future agenda.

Senator Hammond asked if there was any information on how many of the taxing entities are taking the full 3% increase allowed by law. There may be another raise in taxes because the full 3% is not being used now. **Mr. Nelson** responded that those that are not taking the full amount builds up a “foregone amount.” There is about \$30.0 million of foregone amount. In a down economy, that foregone amount could be used up.

Mr. Nelson showed one more example of a comparison of the current system versus the limited system as part of the handout. **Senator Langhorst** asked why this concept was used. **Mr. Nelson** said that these are numbers that were available and applicable that he could pull together on short

notice. These are only used to give an example of what could happen if values are not increasing as they have in the past.

Mr. Chadwick confirmed that they would be back with recommendations for efficiencies and property tax relief.

Mr. Nelson reminded the Committee that the maximum levy rates will be reached because there will not be as much taxable value.

Cochairman Clark announced that the next meeting would be October 29, 2008, and he adjourned the meeting at 1:15 p.m.